

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MICHAEL J. PLAKE, *doing business as*
Plake and Associates; and
PAUL D. CARDWELL,

Defendants.

CASE NO. 12-CR-81-SWS

MARCH 27, 2012
3:42 P.M. - 4:15 P.M.

CASPER, WYOMING

TRANSCRIPT OF HEARING ON
INITIAL APPEARANCE, ARRAIGNMENT AND DETENTION
BEFORE THE HONORABLE SCOTT W. SKAVDAHL
UNITED STATES DISTRICT JUDGE

APPEARANCES: (Via Videoconference from Cheyenne, Wyoming)

For the Government:

Lisa Leschuck
UNITED STATES ATTORNEY'S OFFICE
P.O. Box 668
Cheyenne, Wyoming 82003

For Defendant Plake:

Sean Hays Barrett
P.O. Box 3018
Cheyenne, Wyoming 82009

For Defendant Cardwell:

Robert W. Horn
P.O. Box 4199
Jackson, Wyoming 83001-4199

Reported By:

Jamie L. Hendrich, CSR-RPR-CRR
OFFICIAL FEDERAL COURT REPORTER
U.S. District Courthouse
111 South Wolcott, Room 217
Casper, Wyoming 82601

1 **(The proceedings commence at 3:42 p.m.)**

2 **THE COURT:** All right. Court is in session in the
3 matter of United States of America versus Michael J. Plake and
4 United States of America versus -- *gesundheit* -- Paul D.
5 Cardwell, Case Numbers -- Case Number 12-CR-81. I note the
6 presence of Mr. Cardwell and his counsel -- Mr. Horn, are you
7 present?

8 **MR. HORN:** I'm here, Your Honor.

9 **THE COURT:** Very well. And I also note the presence
10 of Mr. Plake and his counsel, Mr. Barrett, Sean Barrett.
11 Is that correct?

12 **MR. BARRETT:** That's correct, Your Honor.

13 **THE COURT:** All right. The purpose of today's
14 proceedings are an initial appearance and arraignment on an
15 indictment issued by the Wyoming grand jury, charging the
16 defendants with 15 counts; and because of -- well, because of
17 the length of those matters, I'm going to try to consolidate
18 some things here, but first let me -- I'm going to have --
19 because we're all on video, I'm going to have you go ahead and
20 stay at your -- at your respective seats there, but let me
21 verify that you're -- well, you're going to be entering pleas
22 of "not guilty" to the charges.

23 Is that correct, Mr. Barrett?

24 **MR. BARRETT:** That's correct, Your Honor.

25 **THE COURT:** Mr. Horn?

1 **MR. HORN:** That's right, Your Honor.

2 **THE COURT:** All right. And as a preliminary matter, I
3 am appearing by video realtime from Casper, and you all are
4 gathered in Cheyenne. The defendants are present with their
5 counsel in Cheyenne as well as with the counsel for the
6 United States who is in Cheyenne, Ms. Leschuck. Because these
7 are occurring by realtime video, I need to get the consent of
8 the defendants to conducting these proceedings via video.

9 Mr. Plake, you understand that you have the right to
10 have me present in person as opposed to appearing via realtime
11 video. You understand that right?

12 **DEFENDANT PLAKE:** Yes, Your Honor.

13 **THE COURT:** Mr. Cardwell, you understand that right?

14 **DEFENDANT CARDWELL:** Yes, Your Honor.

15 **THE COURT:** And is it your desire to waive that right
16 and allow these proceedings to occur today via realtime video,
17 Mr. Plake?

18 **DEFENDANT PLAKE:** Yes, Your Honor.

19 **THE COURT:** Mr. Cardwell?

20 **DEFENDANT CARDWELL:** Yes, Your Honor.

21 **THE COURT:** All right. Let me verify Mr. -- with both
22 of the defendants, Mis- -- beginning with Mr. Plake, you're not
23 currently under the influence of any alcohol or controlled
24 substance?

25 **DEFENDANT PLAKE:** No, sir.

1 **THE COURT:** Mr. Cardwell?

2 **DEFENDANT CARDWELL:** No, sir.

3 **THE COURT:** You're not currently suffering from any
4 mental or physical conditions that might prevent you from
5 understanding, Mr. Plake?

6 **DEFENDANT PLAKE:** No.

7 **THE COURT:** Mr. Cardwell?

8 **DEFENDANT CARDWELL:** No, sir.

9 **THE COURT:** And you're not currently under the care of
10 a physician or any prescription medication, Mr. Plake?

11 **DEFENDANT PLAKE:** I am currently taking two forms
12 of (garbled) --

13 **THE COURT:** I'm sorry. You can come back a little bit
14 from the microphone. Go ahead and say that again if you could.

15 **DEFENDANT PLAKE:** I am currently taking two forms of
16 antibiotics for diverticulitis which I am (garbled) --

17 **THE COURT:** We're having problems with the audio.
18 Sorry. Say that again, please. "I'm currently taking two
19 forms of antibiotics" --

20 **DEFENDANT PLAKE:** Antibiotics, yes.

21 **THE COURT:** For diverticulitis?

22 **DEFENDANT PLAKE:** Correct, Your Honor.

23 **THE COURT:** All right. And that's not having any
24 impact upon your ability to understand or comprehend?

25 **DEFENDANT PLAKE:** Not at all, Your Honor.

1 **THE COURT:** All right. And, Mr. Plake, I believe I
2 already asked you, but you're not currently taking any
3 medications, correct?

4 **DEFENDANT PLAKE:** I'm taking --

5 **THE COURT:** I'm sorry. That was Mr. Plake.
6 Mr. Cardwell?

7 **DEFENDANT CARDWELL:** Yes, sir. I take Lexapro for
8 anxiety (garbled) --

9 **THE COURT:** Okay. We've got feedback. Mr. Cardwell,
10 you're taking Lexapro for anxiety?

11 **DEFENDANT CARDWELL:** Correct.

12 **THE COURT:** All right. That's not having any impact
13 upon your ability to understand or comprehend?

14 **DEFENDANT CARDWELL:** No, sir.

15 **THE COURT:** All right. Before we go into the details
16 of the charges in this matter, there are certain rights that
17 you have with respect to these proceedings that I need to
18 verify you understand. The burden in this matter is upon the
19 United States at all times to prove, if it can, beyond a
20 reasonable doubt, the allegations as set forth in the
21 indictment. To that extent, you have no obligation to provide
22 the United States with any information by which or through
23 which they can meet those charges.

24 You have the right to remain silent. Anything you say
25 or do can and will be used against you in a court of law. If

1 you choose to make any statements or answer any questions, you
2 may stop at any time. In addition, you're entitled to have
3 your counsel present at the making of any statements.

4 Do you understand these rights, Mr. Cardwell?

5 **DEFENDANT CARDWELL:** Yes, sir.

6 **THE COURT:** Mr. Plake?

7 **DEFENDANT PLAKE:** Yes, Your Honor.

8 **THE COURT:** You also have the right to an attorney.

9 If you are unable to afford an attorney, this Court would
10 consider appointment of counsel for you upon the submission of
11 a verified financial affidavit under oath.

12 Do you understand that right, Mr. Plake?

13 **DEFENDANT PLAKE:** Yes, Your Honor.

14 **THE COURT:** Mr. Cardwell?

15 **DEFENDANT CARDWELL:** Yes, Your Honor.

16 **THE COURT:** You also have the right to a trial in this
17 matter. At that trial you will have the right, with the
18 assistance of your counsel, to hear and confront, through
19 cross-examination, any witnesses called by the United States.
20 In addition, you will have the right to present your own
21 evidence, call your own witnesses; and to the extent any
22 witness is reluctant or refuses to come forward and testify at
23 that trial, you will have the power of this Court's process to
24 compel or subpoena those witnesses to obtain their testimony at
25 that trial. Do you understand these rights, Mr. Cardwell?

1 **DEFENDANT CARDWELL:** Yes, sir.

2 **THE COURT:** Mr. Plake?

3 **DEFENDANT PLAKE:** Yes, Your Honor.

4 **THE COURT:** All right. All right. You also would
5 have the right to appeal any adverse decision rendered by a
6 jury on the merits of any of the charges.

7 You understand that right, Mr. Cardwell?

8 **DEFENDANT CARDWELL:** Yes, Your Honor.

9 **THE COURT:** Mr. Plake?

10 **DEFENDANT PLAKE:** Yes, Your Honor.

11 **THE COURT:** All right. At this time I want to turn to
12 the charges in the indictment and verify your understanding as
13 to the charges and the potential maximum penalties. Before we
14 go through that, I guess, counsel, let me ask: Would you and
15 your clients allow this Court to summarize the charges as
16 opposed to a reading of each and every one of those, Mr. Horn?

17 **MR. HORN:** This is Bob Horn and I would agree to that,
18 Your Honor. And please understand that I've gone over the
19 indictment with Paul Cardwell, and he understands the nature of
20 what he's charged with, and he understands what we're doing
21 here today. So I believe it would be appropriate for you to
22 summarize to the extent you feel necessary.

23 **THE COURT:** All right. Thank you.

24 Mr. Barrett, will your client agree as well?

25 **MR. BARRETT:** He does, Your Honor.

1 **THE COURT:** All right. And let me ask each of you.
2 Mr. Cardwell, you agree to a summary -- allowing this Court to
3 summarize the charges as opposed to a reading of each of the
4 counts?

5 **DEFENDANT CARDWELL:** Yes, Your Honor.

6 **THE COURT:** And Mr. Plake?

7 **DEFENDANT PLAKE:** Yes, Your Honor.

8 **THE COURT:** All right. The purpose of the arraignment
9 in this matter is to review and verify the charges that have
10 been brought against you and the potential maximum penalties
11 that could be imposed if you were to be found guilty of that
12 charge or those charges. After verifying your understanding as
13 to the charges, I will ask you to enter pleas. It's my
14 understanding that you'll be entering pleas of "not guilty" to
15 all of the charges. However, for purposes of the record, the
16 other pleas that could be entered would be "guilty," "not
17 guilty by reasons of mental deficiency" and "*nolo contendere*"
18 or "no contest."

19 Do you understand this, Mr. Cardwell?

20 **DEFENDANT CARDWELL:** Yes, Your Honor.

21 **THE COURT:** Mr. Plake?

22 **DEFENDANT PLAKE:** Yes, Your Honor.

23 **THE COURT:** All right. Turning then to the
24 indictment, Count One of that indictment involves a charge of
25 conspiracy to commit mail and wire fraud. There are common

1 allegations that are set forth in Paragraphs One through Six on
2 pages 1 and 2 of the indictment, and the Court will not
3 summarize those other than to say that it involves an alleged
4 scheme whereby Powell Valley Healthcare, Incorporated, paid to
5 Plake and Associates \$847,884 -- or is alleged to have paid --
6 through a scheme alleged to have been created by the defendants
7 as summarized in those counts.

8 Count One alleges that beginning on or about
9 March 2011 and continuing through and including September 2011,
10 in the District of Wyoming and elsewhere, the defendants, Paul
11 D. Cardwell and Michael J. Plake, did knowingly, intentionally
12 and unlawfully combine, conspire, confederate and agree with
13 one another to commit mail fraud and wire fraud by devising and
14 executing a scheme and artifice to defraud and to obtain money
15 by means of false and fraudulent pretenses, representations and
16 promises from Powell Valley Healthcare, Inc., Powell, Wyoming,
17 which scheme was furthered by the use of the mails as well as
18 commercial interstate carrier and wire communications. This is
19 alleged to be in violation of Title 18, United States Code,
20 Sections 1341 and 1343.

21 The alleged manner and means are thereafter summarized
22 in Paragraphs 1 through 7. All of this is alleged to be in
23 violation of Title 18, United States Code, Section 1349. This
24 is a crime that carries a potential maximum penalty of up to 20
25 years imprisonment and/or including up to a 250,000-dollar fine

1 and a 100-dollar special assessment. In addition, any period
2 of incarceration could be followed by up to three years of
3 supervised release.

4 Mr. Horn, do you agree as to the potential applicable
5 penalties?

6 **MR. HORN:** Yes, sir.

7 **THE COURT:** Mr. Barrett?

8 **MR. BARRETT:** I do, Your Honor.

9 **THE COURT:** Mr. Cardwell, do you understand the nature
10 of the charge as contained in Count One of the indictment?

11 **DEFENDANT CARDWELL:** Yes, sir.

12 **THE COURT:** And Mr. Plake?

13 **DEFENDANT PLAKE:** Yes, Your Honor.

14 **THE COURT:** And do you understand the potential
15 maximum penalties and/or fines that could be imposed if you
16 were to be found guilty of that charge, Mr. Cardwell?

17 **DEFENDANT CARDWELL:** Yes, sir.

18 **THE COURT:** Mr. Plake?

19 **DEFENDANT PLAKE:** Yes, Your Honor.

20 **THE COURT:** Turning to Count Two, Count Two alleges
21 beginning on or about April 2011 and continuing through and
22 including September 2011, in the District of Wyoming and
23 elsewhere, the defendants, Paul D. Cardwell and Michael J.
24 Plake, did knowingly, intentionally and unlawfully combine,
25 conspire, confederate and agree with each other to engage in

1 monetary transactions affecting interstate commerce in
2 criminally derived property of a value greater than \$10,000 as
3 described in the "Manner and Means" portion of Count One of
4 this indictment; that is, Michael J. Plake returned
5 approximately \$706,000 to Paul D. Cardwell which were proceeds
6 from recruiting fees paid to PVHC to Plake and Associates for
7 which recruiting never occurred, in violation of
8 18 United States Code, Section 1957. The alleged manner and
9 means by which this alleged crime occurred is set forth
10 thereafter in Paragraphs 1 through 4 on page 5 of the
11 indictment.

12 All of this is alleged to be in violation of Title 18,
13 United States Code, Section 1956(h). That is a crime that
14 carries a potential maximum penalty of up to ten years
15 imprisonment and/or including up to a 250,000-dollar fine and a
16 100-dollar special assessment. In addition, any period of
17 incarceration could be followed by up to three years of
18 supervised release.

19 Mr. Horn, do you agree as to the applicable penalties?

20 **MR. HORN:** That's correctly stated, Your Honor.

21 **THE COURT:** Mr. Barrett?

22 **MR. BARRETT:** Yes, Your Honor.

23 **THE COURT:** All right. Mr. Cardwell, do you
24 understand the nature of the charge as contained in Count Two?

25 **DEFENDANT CARDWELL:** Yes, Your Honor.

1 **THE COURT:** And, Mr. Plake, do you understand the
2 nature of the charge?

3 **DEFENDANT PLAKE:** Yes, Your Honor.

4 **THE COURT:** And as to the applicable penalties, do you
5 understand those applicable to Count Two, Mr. Cardwell?

6 **DEFENDANT CARDWELL:** I do, sir.

7 **THE COURT:** And Mr. Plake?

8 **DEFENDANT PLAKE:** I do, Your Honor.

9 **THE COURT:** Turning to Count Three through
10 Count Fourteen, each of those counts involves an alleged
11 violation of Title 18, United States Code, Section 1341. The
12 only -- well, there are -- the detailed differences are set
13 forth therein, but I will read a general summary as to the
14 nature of the charge -- charges in Counts Three through
15 Fourteen. Those counts generally allege on or about a date set
16 forth, in the District of Wyoming and elsewhere, the
17 defendants, Paul D. Cardwell and Michael J. Plake, for the
18 purposes of executing and attempting to execute a scheme and
19 artifice to defraud and for obtaining money and property by
20 means of false and fraudulent pretenses, representations and
21 promises as described in the "Manner and Means" portions in
22 Counts One and Two of this indictment, did knowingly cause to
23 be placed, in an authorized depository for mail matter
24 according to the directions thereon, a Powell Valley
25 Healthcare, Inc., check, different numbered for each count,

1 payable to Plake and Associates, LLC, in the amount of -- which
2 is various, depending upon the count, and sent via Federal
3 Express, a commercial interstate carrier, which funds were
4 subsequently converted to the defendants Paul D. Cardwell's and
5 Michael J. Plake's personal use and benefit.

6 Each of these counts alleges it is in violation of
7 Title 18, United States Code, Section 1341. Each of these
8 counts carries a potential maximum penalty of up to 20 years
9 imprisonment and/or including up to a 250,000-dollar fine and a
10 100-dollar special assessment. In addition, any period of
11 incarceration could be followed by up to three years of
12 supervised release.

13 Mr. Horn, do you agree as to the applicable penalties
14 under Counts Three through Fourteen?

15 **MR. HORN:** I do.

16 **THE COURT:** Mr. Bennett -- Barrett. Sorry.

17 **MR. BARRETT:** That's all right, Your Honor. I do.

18 **THE COURT:** All right. Mr. Cardwell, do you
19 understand the nature of the charges as contained in
20 Counts Three through Fourteen of the indictment?

21 **DEFENDANT CARDWELL:** Yes, Your Honor.

22 **THE COURT:** Mr. Plake?

23 **DEFENDANT PLAKE:** Yes, Your Honor.

24 **THE COURT:** And you understand the potential maximum
25 penalties and/or fines that could be applied as to each of

1 those counts in Three through Fourteen, Mr. Cardwell?

2 **DEFENDANT CARDWELL:** I do, sir.

3 **THE COURT:** Mr. Plake?

4 **DEFENDANT PLAKE:** I do, Your Honor.

5 **THE COURT:** All right. Turning to Count Fifteen, as
6 to Count Fifteen, it alleges that on or about September 25,
7 2011, in the District of Wyoming and elsewhere, the defendants,
8 Paul D. Cardwell and Michael J. Plake, for the purposes of
9 executing and attempting to execute a scheme and artifice to
10 defraud and for obtaining money by means of false and
11 fraudulent pretenses, representations and promises as described
12 in the "Manner and Means" portions of Counts One and Two of
13 this indictment, did knowingly cause to be transmitted by means
14 of wire communication in interstate commerce between India
15 (sic) and Wyoming, certain signs, signals and sounds, that is,
16 an electronic wire communication, an email, which included
17 invoices and alleged contracts between Plake and Associates and
18 Powell Valley Healthcare, Incorporated.

19 This is alleged to be in violation of Title 18,
20 United States Code, Section 1343. This is a crime that carries
21 a potential maximum penalty of up to 20 years imprisonment
22 and/or including up to a 250,000-dollar fine and a 100-dollar
23 special assessment. In addition, any period of incarceration
24 could be followed by up to three years of supervised release.

25 Mr. Horn, do you agree as to the applicable penalties?

1 **MR. HORN:** Correctly stated, Your Honor.

2 **THE COURT:** Mr. Barrett?

3 **MR. BARRETT:** Yes, Your Honor.

4 **THE COURT:** And, Mr. Cardwell, do you understand the
5 allegation as set forth in Count Fifteen of the indictment?

6 **DEFENDANT CARDWELL:** Yes, Your Honor.

7 **THE COURT:** Mr. Plake?

8 **DEFENDANT PLAKE:** Yes, Your Honor.

9 **THE COURT:** And you understand the potential maximum
10 penalties and/or fines that could be imposed, Mr. Cardwell?

11 **DEFENDANT CARDWELL:** Yes, Your Honor.

12 **THE COURT:** Mr. Plake?

13 **DEFENDANT PLAKE:** Yes, Your Honor.

14 **THE COURT:** At this time, Mr. Horn, is your client
15 prepared to enter pleas of "not guilty" to the counts in the
16 indictment?

17 **DEFENDANT CARDWELL:** Yes, sir.

18 **THE COURT:** Mr. Michael -- I'm sorry. That's the
19 wrong defendant. Mr. Paul D. Cardwell, as to the charge
20 contained in Count One of the indictment, how do you plead?

21 **DEFENDANT CARDWELL:** Not guilty.

22 **THE COURT:** As to the charge in Count Two, how do you
23 plead?

24 **DEFENDANT CARDWELL:** Not guilty, Your Honor.

25 **THE COURT:** As to the charge in counts -- Count Three,

1 how do you plead?

2 **DEFENDANT CARDWELL:** Not guilty, Your Honor.

3 **THE COURT:** As to Count Four?

4 **DEFENDANT CARDWELL:** Not guilty, Your Honor.

5 **THE COURT:** As to Count Five?

6 **DEFENDANT CARDWELL:** Not guilty.

7 **THE COURT:** As to Count Six?

8 **DEFENDANT CARDWELL:** Not guilty.

9 **THE COURT:** As to Count Seven?

10 **DEFENDANT CARDWELL:** Not guilty.

11 **THE COURT:** As to Count Eight.

12 **DEFENDANT CARDWELL:** Not guilty.

13 **THE COURT:** As to Count Nine?

14 **DEFENDANT CARDWELL:** Not guilty.

15 **THE COURT:** As to Count Ten?

16 **DEFENDANT CARDWELL:** Not guilty, Your Honor.

17 **THE COURT:** As to Count Eleven?

18 **DEFENDANT CARDWELL:** Not guilty.

19 **THE COURT:** As to Count Twelve?

20 **DEFENDANT CARDWELL:** Not guilty.

21 **THE COURT:** As to Count Thirteen?

22 **DEFENDANT CARDWELL:** Not guilty.

23 **THE COURT:** As to Count Fourteen?

24 **DEFENDANT CARDWELL:** Not guilty.

25 **THE COURT:** And as to Count Fifteen?

1 **DEFENDANT CARDWELL:** Not guilty, Your Honor.

2 **THE COURT:** "Not guilty" pleas will be entered as to
3 each count, One through Fifteen, of the indictment as to
4 defendant Mr. Paul D. Cardwell.

5 Turning to the defendant Mr. Michael J. Plake,
6 Mr. Barrett, is your client prepared to enter pleas of "not
7 guilty" at this time?

8 **MR. BARRETT:** He is, Your Honor.

9 **THE COURT:** Mr. Michael J. Plake, as to the charge
10 contained in Count One of the indictment, how do you plead?

11 **DEFENDANT PLAKE:** Not guilty.

12 **THE COURT:** As to Count Two?

13 **DEFENDANT PLAKE:** Not guilty.

14 **THE COURT:** As to Count Three?

15 **DEFENDANT PLAKE:** Not guilty.

16 **THE COURT:** As to Count Four?

17 **DEFENDANT PLAKE:** Not guilty.

18 **THE COURT:** As to Count Five?

19 **DEFENDANT PLAKE:** Not guilty.

20 **THE COURT:** As to Count Six?

21 **DEFENDANT PLAKE:** Not guilty.

22 **THE COURT:** As to Count Seven?

23 **DEFENDANT PLAKE:** Not guilty.

24 **THE COURT:** As to Count Eight?

25 **DEFENDANT PLAKE:** Not guilty.

1 **THE COURT:** As to Count Nine?

2 **DEFENDANT PLAKE:** Not guilty.

3 **THE COURT:** As to Count Ten?

4 **DEFENDANT PLAKE:** Not guilty.

5 **THE COURT:** As to Count Eleven?

6 **DEFENDANT PLAKE:** Not guilty.

7 **THE COURT:** As to Count Twelve?

8 **DEFENDANT PLAKE:** Not guilty.

9 **THE COURT:** As to Count Thirteen?

10 **DEFENDANT PLAKE:** Not guilty.

11 **THE COURT:** As to Count Fourteen?

12 **DEFENDANT PLAKE:** Not guilty.

13 **THE COURT:** And as to Count Fifteen?

14 **DEFENDANT PLAKE:** Not guilty, Your Honor.

15 **THE COURT:** "Not guilty" pleas will be entered as to
16 Counts One through Fifteen of the indictment as to Defendant
17 Michael J. Plake.

18 And this matter will be set for trial before
19 Judge Freudenthal. Based upon speedy trial time lines in this
20 matter, it would appear that trial is required to be held
21 June 4, 2012, and the matter would be set for trial at
22 8:30 a.m. on June 4th.

23 As to the setting being within the speedy trial time
24 frame, Ms. Leschuck, do you agree that that is within the
25 speedy trial requirements?

1 **MS. LESCHUCK:** Your Honor, I do agree speedy trial
2 does expire on June 5th.

3 **THE COURT:** All right. And you would agree as to the
4 setting of the trial at that date and time at this time,
5 Mr. Barrett?

6 **MR. BARRETT:** Yes, Your Honor.

7 **THE COURT:** And Mr. Horn?

8 **MR. HORN:** Yes. The date -- well, give me the time
9 again. Was it nine o'clock, Your Honor?

10 **THE COURT:** It'll be 8:30 a.m.

11 **MR. HORN:** 8:30. Yes, sir, I agree.

12 **THE COURT:** All right. As to the issue of discovery,
13 Ms. Leschuck, what is the United States' position?

14 **MS. LESCHUCK:** United States' position, Your Honor, is
15 that based on -- it's an open file discovery case. I have
16 delivered some discovery to defendants today, and there will be
17 some more to follow. Also along that line, grand jury
18 transcripts are permitted for each defendant.

19 **THE COURT:** All right. Any comments regarding the
20 discovery, Mr. Barrett?

21 **MR. BARRETT:** No, Your Honor.

22 **THE COURT:** Mr. Horn?

23 **MR. HORN:** No, sir.

24 **THE COURT:** All right. I will enter a discovery order
25 in accordance with Rule 16. In addition, I will enter an order

1 allowing access to grand jury transcripts.

2 What is the United States' position regarding issues
3 of detention, Ms. Leschuck?

4 **MS. LESCHUCK:** Your Honor, I know that there's been a
5 pretrial services report done on Mr. Cardwell. It has
6 recommended his release with conditions. I do not believe one
7 has been completed for Mr. Plake, but my position would be the
8 same as to both defendants; and, that is, that both be released
9 today on a 100,000-dollar O.R. bond.

10 I would note that target letters were sent to each
11 defendant in early January -- or excuse me -- late January of
12 2012. They have both communicated with me through various
13 attorneys either in Indiana or the attorneys that are present
14 here today. They have met their obligations in being here for
15 this appearance, and I would expect them to make their further
16 appearances as necessary.

17 I do note that both have passports, and I've asked
18 each counsel to bring their passports here today and surrender
19 them and that they not be allowed to further travel except
20 within the State of Indiana where they reside or to Wyoming for
21 court appearances.

22 I believe Mr. Cardwell has put forth a set of what I
23 would call the -- the "usual conditions of bond" for
24 Mr. Cardwell. I would ask that those apply to Mr. Plake as
25 well and that if Mr. Cardwell has -- excuse me -- if

1 Mr. Caldwell, the proba- -- the probation officer or pretrial
2 services officer here today, has any other conditions he would
3 recommend, I would ask that he make those recommendations at
4 this time.

5 **THE COURT:** All right. Mr. Caldwell, are there any
6 additional recommendations you would make at this time?

7 **PROBATION OFFICER CALDWELL:** No, Your Honor. Thank
8 you.

9 **THE COURT:** All right. Mr. Horn, any comments
10 regarding the recommendation and conditions?

11 **MR. HORN:** Your Honor, the recommendations that have
12 been made by Phillip Caldwell -- I've gone over them with
13 Mr. Cardwell, and we believe that those are appropriate.
14 There's a discrepancy between the recommendation made by
15 Mr. Caldwell for a 20,000-dollar unsecured bond and the
16 recommendation made by Ms. Leschuck which is a 100,000-dollar
17 unsecured bond. We think that the 20,000-dollar unsecured bond
18 is more appropriate in this situation.

19 Mr. Cardwell has cooperated and done everything that's
20 been asked of him. I think that the actions he's taken are
21 consistent with the idea that he will appear for all court
22 appearances. He does have his passport here. We're prepared
23 to surrender that to the Court -- to the Court, Your Honor, and
24 we accept the conditions regarding travel. So we would say
25 that we're in alignment with the recommendations that have been

1 made by Mr. Caldwell, and we would ask that you release
2 Mr. Cardwell based on those recommendations.

3 **THE COURT:** All right. Thank you.

4 Mr. Barrett, with respect to the recommendation by the
5 United States regarding Mr. Plake?

6 **MR. BARRETT:** Your Honor, I would concur with
7 Ms. Leschuck. I, too, would advise the Court -- and I don't
8 want to be redundant, but there was preindictment
9 cooperation -- at least "communication," I should say --
10 between the defendant and United States through me after I had
11 been retained. We've had an open line of communication with
12 Ms. Leschuck and attempted to get in contact with probation
13 last week. I may have -- I don't know if the messages got
14 through. So we did make those attempts as well, Your Honor,
15 and there doesn't appear to be any danger to the community or
16 flight risk which is two of the factors taken into
17 consideration with regards to Mr. Plake. He has appeared here
18 on a summons. I have his passport with me today, and I can
19 hold on to that or turn it over to whoever may want it,
20 probation or otherwise.

21 When you look at the factors, Your Honor, under 31 --
22 18 U.S.C. 3142, Subsection (g) factors to be considered in
23 release, Mr. Plake certainly seems to be a good candidate for
24 release, Your Honor. He's a 40-some-year-old man; two -- two
25 young kids back in Indiana. That's been his home state where

1 he's -- where he currently works and resides full time.
2 It's -- he's a director of a religious -- religious education
3 program out there, Your Honor, as well. He's got a lot of
4 responsibilities, and he has no problem at his own expense
5 making it back for any appearances as necessary.

6 **THE COURT:** All right. Ms. Leschuck, anything
7 further?

8 **MS. LESCHUCK:** No, Your Honor. Thank you.

9 **THE COURT:** All right. Well, based upon a review of
10 the facts and circumstances in this matter, the Court would
11 find that there are terms or conditions of release that can be
12 fashioned under Title 18, United States Code, Section 3142, to
13 adequately ensure the appearance of the defendants, Mr. Plake
14 and Mr. Cardwell, at future proceedings and the safety of the
15 community.

16 So the Court would, with respect to the release of
17 both of the defendants, direct that they be released under
18 supervision which would require -- under conditions which would
19 require that they be released on a 50,000 unsecured bond,
20 PR bond, with pretrial supervision subject to the following
21 conditions:

22 In terms of the amount of that bond, 20,000 is the
23 typical amount with respect to individuals in the District of
24 Wyoming. Because I'm dealing with individuals that are outside
25 the District of Wyoming -- and I'm going to allow here in a

1 moment that they reside in Indiana -- I believe a greater
2 amount is necessary to ensure their appearance as well as to be
3 available in the event that the Marshals Service or some other
4 entity was required to retrieve them. So I guess the -- I
5 understand the 20,000 was there; but, under the circumstances,
6 I don't think 100,000 is necessary, but I think 50,000 is
7 appropriate, given the facts and circumstances it is a PR bond.

8 The -- each of the defendants will be required to
9 report to the U.S. Probation/Pretrial Services Office as
10 directed. They shall obey all local, state and federal laws
11 and not violate any as a condition; and they also shall
12 maintain -- with respect to the defendant Mr. Cardwell -- which
13 I have to be very careful not to change the "R" to an "L" --
14 but with respect to Mr. Cardwell, I would require that he
15 maintain his residence with his mother, as I understand it, in
16 Tipton, Indiana, and shall not move from that residence while
17 this case is pending without prior permission from pretrial
18 services.

19 He shall further seek and maintain full-time
20 employment, and he shall not travel outside the State of
21 Indiana and Wyoming unless he has received prior permission
22 from the U.S. Probation/Pretrial Services Office other than for
23 court proceedings and to meet with counsel. He shall also
24 surrender his passport to the Clerk of District Court and shall
25 not apply for or obtain another passport while this matter is

1 pending. He shall not use, purchase or possess any firearm or
2 other dangerous weapons.

3 With respect to Mr. Plake, I would require as well a
4 50,000 unsecured bond with pretrial supervision with the
5 following conditions: He report to the United States
6 Probation/Pretrial Services Office as directed. He shall obey
7 all local, state and federal laws and not violate them. He
8 shall maintain his residence and provide pretrial services with
9 that address and the phone number so that they can verify his
10 location, and he shall not move from that residence without the
11 prior permission of his pretrial supervision officer.

12 He shall seek and maintain full-time employment. He
13 shall not travel outside the States of Indiana or Wyoming
14 unless he has received prior permission from the
15 U.S. Probation/Pretrial Services Office other than for court
16 proceedings which he shall be required to attend, as will
17 Mr. Cardwell, and to meet or confer with counsel. He shall
18 surrender his passport to the Clerk of District Court for the
19 District of Wyoming as well and not apply for or obtain another
20 passport while this case is pending; and he shall not use,
21 purchase or possess any firearm or other dangerous weapon.
22 Those would be the conditions upon which I would allow for
23 release in accordance with Section 3142 of Title 18.

24 Any concerns with those conditions, Mr. Horn?

25 **MR. HORN:** No, Your Honor.

1 **THE COURT:** Mr. Barrett?

2 **MR. BARRETT:** No, Your Honor.

3 **THE COURT:** Very well. I would direct that the
4 necessary paperwork be provided so that the PR bonds can be
5 filed.

6 Are there any other matters that we need to address --
7 I would back up for one moment. I would provide for 20 days
8 for the filing of any motions regarding the -- the issues under
9 the criminal rules of procedure and/or case law.

10 Are there any additional matters we need to address at
11 this time, Ms. Leschuck?

12 **MS. LESCHUCK:** No, Your Honor. Thank you.

13 **THE COURT:** Mr. Horn?

14 **MR. HORN:** No, Your Honor.

15 **THE COURT:** Mr. Barrett?

16 **MR. BARRETT:** No, Your Honor.

17 **THE COURT:** All right. Very well. Thank you. We'll
18 stand in recess at this time.

19 **THE CLERK:** All rise. Court will stand in recess.

20 **(The proceedings conclude at 4:15 p.m.)**

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REPORTER CERTIFICATE

I, JAMIE L. HENDRICH, retired Official Federal Court Reporter in the United States District Court for the District of Wyoming, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

09.03.15

Date

/S/

JAMIE L. HENDRICH, CSR-RPR-CRR
Retired Official Federal
Court Reporter

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